

REMARKS

Double Patenting

The Examiner has said:

A rejection based on double patenting of the “same invention” type finds its support in the language of 35 U.S.C. 101 which states that “whoever invents or discovers any new and useful process ... may obtain a patent therefor ...” (Emphasis added). Thus, the term “same invention,” in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

...

Claims 1-24 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-24 of copending Application No. 09/862,893. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Applicant agrees that the same words are used in claims 1-24 of both patent applications but respectfully suggests that the word “rotate” has different meanings in the two applications.

It is so generally known as, Applicant respectfully believes, not to require citation that claims are interpreted in light of the specification.

Lines 27 through 29 on page 5 of application no. 09/862,893 provide:

Then an elastomer is introduced into the mold 1 and the mold 1 is rotated about three different axes, preferably but not necessarily, three orthogonal axes. Introduction of the elastomer may occur either before or after rotation of the mold 1 commences.

On the contrary, lines 27 through 29 on page 6 of the present application explain:

Then an elastomer is introduced into the mold 1 and the mold 1 is rotated about multiple different axes, preferably but not necessarily, two orthogonal axes. Introduction of the elastomer may occur either before or after rotation of the mold 1 commences.

Thus, the present application uses "rotation" to mean rotation about multiple different axes whereas "rotation" in application no. 09/862,893 means rotation about three different axes.

Thus, Applicant respectfully submits that the claims are not identical.

Should the Examiner wish to indicate that a terminal disclaimer would be appropriate to remove the possibility of rejection, Applicant will be pleased to prepare and execute such a terminal disclaimer.

Since language in the Summary of the Invention for the present application was erroneously not altered from application no. 09/862,893 when the present application was prepared, this language could have caused confusion and has been amended to be consistent with the more specific (and accurate) language from the Description of the Preferred Embodiment quoted above.

Also, from an abundance of caution, new claim 25 has been presented explicitly to indicate rotation about a number of axes other than three.

Applicant respectfully requests the Examiner to withdraw the provisional rejection and to allow claims 1 through 25 or to indicate that such allowance would be appropriate were a terminal disclaimer to be filed for the present application.

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Respectfully,

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